



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

JOHN A. LASOTA, JR.
ATTORNEY GENERAL

June 22, 1978

Bartlett S. Fleming
State Treasurer
State Capitol
Phoenix, Arizona 85007

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: 78-124 (R)

Dear Mr. Fleming:

You have requested our opinion on the following questions:

1. May the State Treasurer accept, as collateral for public deposits, tax anticipation notes or bond anticipation notes?
2. If the answer to question 1 is in the affirmative, is it permissible to restrict for collateral purposes tax anticipation notes or bond anticipation notes to those issued by Arizona municipalities?

For the reasons developed below, we have concluded that the answer to question 1 is in the negative, and therefore question 2 need not be answered.

A.R.S. § 35-322 provides that financial institutions seeking to become depositories of public funds must first deposit with the State Treasurer a surety bond in a penal sum of not less than the amount the institution is to receive on deposit. The statute further states that in lieu of a surety bond, the financial institution may deposit with the Treasurer securities or instruments of a listed character, or the safekeeping receipt of certain banks. Tax anticipation notes or bond anticipation notes are nowhere mentioned in the statute.

Jarvis v. Hammons, 32 Ariz. 444, 259 P. 886 (1927), involved the workings of the public depository system as set up under the Arizona Civil Code of 1913. Paragraph 4648 of that Code allowed financial institutions to give other security for the deposit of public moneys in lieu of a surety bond (in much the same manner as A.R.S. § 35-322). In considering whether county warrants were a proper type of security to be given in lieu of a surety bond, the Supreme Court of Arizona said:

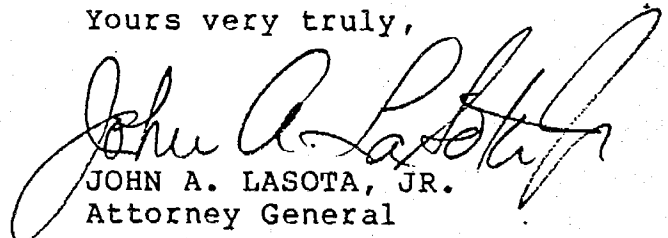
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The county warrants of Apache and Navajo counties left with the county treasurer as security for public moneys of the county were not of the kind of securities enumerated by the statute that might be used in lieu of personal sureties or a surety company bond. The county treasurer had no authority to accept such warrants and make deposits of public moneys against them. If he could disregard the statute and accept county warrants as security for deposits, he could accept any other kind of securities. He had no right to disregard the terms of the statute, for if he could accept any other security than that enumerated in the statute we see no reason why he could not take as security any commercial paper, including stocks of oil and mining companies. The fact that in this case the securities taken by the county treasurer happened to be good does not change the rule. 32 Ariz. at 450.

Although the governing statute in Jarvis, supra, is not identical to A.R.S. § 35-322, the court's reasoning in that case is equally applicable to the current problem. County warrants were not listed as acceptable security in lieu of a surety bond under Paragraph 4648 of the Arizona Civil Code of 1913; tax anticipation notes or bond anticipation notes are not listed under A.R.S. § 35-322. Consequently, the State Treasurer cannot accept tax anticipation notes or bond anticipation notes as collateral for public deposits.

Yours very truly,



JOHN A. LASOTA, JR.
Attorney General

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